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DE RUEHVJ #0510/01 0651501
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FM AMEMBASSY SARAJEVO
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5627
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY
RUEAIIA/CIA WASHINGTON DC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEKJCS/SECDEF WASHDC PRIORITY
RUEKJCS/JCS WASHINGTON DC PRIORITY
RUFOAOA/USNIC SARAJEVO PRIORITY

C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000510

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FOR BRAUN, PRM FOR OLSON AND COHEN

E.O. 12958: DECL: 03/05/2017

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SUBJECT: BOSNIA - NEW BATTLE BEGINS OVER CITIZENSHIP LAW

REF: SARAJEVO 348 AND PRIOR

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Classified By: DCM Judith B. Cefkin, reasons 1.4 (b) and (d).

11. (C) SUMMARY: The opening salvo in what could prove to be an ugly political battle over amendments to the Bosnian Law on Citizenship came on February 27, when FM Sven Alkalaj (Party for BiH (SBiH)) sent a diplomatic note to the Serbian MFA informing it that the bilateral agreement on dual citizenship between Bosnia and Serbia-Montenegro was no longer in force. Alkalaj claims that because Montenegro is now a separate country, the bilateral agreement no longer governs dual Bosnian-Serbian citizenship. The Serbian MFA claims Alkalaj's interpretation is incorrect, as Serbia is the successor state to Serbia and Montenegro -- a view shared by Bosnian Serbs. The announcement, coming just one day after the controversial International Court of Justice (ICJ) ruling in the case of Bosnia and Herzegovina vs. Serbia and Montenegro, touched off calls for Alkalaj's immediate dismissal by Serb politicians. Bosniaks and Serbs insist their opposing views are based on moral and constitutional concerns respectively. But the reality is that nationalist politics are fueling the debate. Though the U.S. does not have a dog in the fight, the acrimony is likely to complicate our longstanding effort to amend Article 10 of the Law on Citizenship, which would close a loophole that undermines a key U.S. counterterrorism priority in Bosnia. END SUMMARY.

Background: How We Got Here

12. (C) Article 17 of the Law on Citizenship, promulgated by then-High Representative Carlos Westendorp in 1998, provides that Bosnians may not retain their BiH citizenship if they become citizens of another country unless Bosnia and that country have signed a dual citizenship agreement. Bosniak politicians, especially those from SBiH, want Article 17, which applies to all Bosnians who acquired foreign citizenship after January 1, 1998, repealed. They argue that Article 17 forces those Bosnians displaced by the 1992-95 war (mostly Bosniaks from the RS) to choose between maintaining their Bosnian citizenship or accepting the citizenship of the countries to which they fled. This is because countries where these people now live (i.e., Western Europe and the U.S.) are unable or unwilling to conclude dual citizenship agreements with Bosnia. Article 17's effect, Bosniaks argue, is to "continue ethnic cleansing by other means." (Comment:

A senior staffer for Bosniak member of the Tri-Presidency Haris Silajdzic labeled Article 17's implications "Nazi-like." While the "moral highground" is undoubtedly important to Silajdzic and his staff, we suspect old-fashioned ward politics also drive SBiH's views on this issue. The Bosniak diaspora is seen as an SBiH constituency, and if they lost their Bosnian citizenship, they would lose their right to vote in Bosnian elections. End Comment.)

13. (C) Bosniaks have tried three times to amend the Law on Citizenship to address their concerns, but on each occasion the Serbs have used entity voting to block any changes. This occurred most recently in 2006, just prior to the October elections. Bosnian Serbs contend that amending or repealing Article 17 of the Law on Citizenship would be unconstitutional. (Note: Article I.7.(d) of the Dayton Constitution allows Bosnians to hold dual citizenship, "provided that there is a bilateral agreement...between Bosnia and Herzegovina and that state governing this matter." End Note.) The Bosniaks, unsurprisingly, dispute the Serb interpretation of Dayton. They argue the Dayton language has the same effect as a similar provision in U.S. law, which states that while U.S. citizens may also hold foreign citizenship, in the eyes of U.S. law, they are always American.

14. (C) Beyond the argument that repealing Article 17 would be unconstitutional, Bosnian Serbs also have political motives for opposing a change. Bosnian Serbs who fled during the war settled for the most part in neighboring countries with which Bosnia has bilateral agreements on dual citizenship (i.e., mainly Serbia, but Croatia also has a dual citizenship agreement with Bosnia), thereby preserving the right of diaspora Bosnian Serbs to continue to vote in Bosnian elections and collect pensions and other benefits. By refusing to amend the law, Bosnian Serb politicians are

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able to protect the interests of their constituents without the risk that large numbers of diaspora Bosniaks will vote in (or return to) the RS, diluting their authority in the entity.

15. (U) Article 17 was supposed to go into effect in 2003, which prompted in late 2002 the first of the three Bosniak attempts to repeal or amend it. When Bosnian political parties failed to pass an amendment to allow unrestricted dual citizenship (in line with standard European practice), then-High Representative Paddy Ashdown used the Bonn Powers to amend the Law on Citizenship so that Bosnians who became citizens of another country prior to January 1, 1998 could maintain their Bosnian citizenship, even in the absence of a bilateral agreement, until January 1, 2013. The Ashdown decision appeared to have provided a reprieve to all Bosnians. A much larger number of Bosnians who obtained foreign citizenship after January 1, 1998 remains in question. (Comment: Our judgment is that this analysis has some merit. End Comment.)

The Current Situation

17. (U) On February 27, just one day after the International Court of Justice (ICJ) verdict in the case of Bosnia and Herzegovina vs. Serbia and Montenegro, Bosnian Foreign Minister Sven Alkalaj (SBiH) informed the Serbian government that the bilateral agreement between Bosnia and Herzegovina and Serbia and Montenegro on dual citizenship was no longer in force. By way of explanation, Alkalaj asserted that as the state of Serbia and Montenegro no longer existed, the agreement was void. The Serbian government disagreed, noting that Serbia was the legal successor state to Serbia and Montenegro (a claim backed up in the ICJ verdict, as the Court affirmed in its February 26 decision that Serbia is the legal successor to Serbia and Montenegro).

18. (C) Bosnian Serb leaders were outraged by Alkalaj's decision, and called for his immediate dismissal. It also

brought the issue of revising the Law on Citizenship to the forefront of political debate in Bosnia. Though they insist Alkalaj is on solid legal ground, Silajdzic's staffers tell us that Alkalaj's decision was an attempt to force the hand of Serb politicians. By declaring the bilateral agreement with Serbia void, SBiH believes the Bosnian Serbs will be forced to accept repeal of Article 17 or negotiate an amendment to it in order to protect the interests of their constituents living in Serbia.

Comment

¶9. (C) The current controversy over Article 17 of the Law on Citizenship will, in the short term, complicate U.S. efforts to amend Article 10 of the same law to prevent former mujahideen stripped of their Bosnian citizenship from reapplying for Bosnian passports. This outcome, as we have reported in the past, would undercut a top USG counterterrorism priority in Bosnia (Reftel). That said, the controversy may also have created some space for a political deal on citizenship issues that would address Bosniak concerns and advance U.S. counterterrorism objectives. The amendment to Article 10 is supported by the Bosnian Serbs and Croats, but is opposed by SBiH and some elements of the other major Bosniak party, the Party for Democratic Action (SDA). These forces combined to block the change to Article 10 in the fall of 2006. A deal between the Bosniaks and Serbs, whereby Serbs would agree to support unrestricted dual citizenship if the Bosniaks would agree to eliminate the right of those stripped of citizenship to reapply would make political sense.

¶10. (C) Nonetheless, a political deal may prove to be a tough sell. While Serbs support the amendment to Article 10, it is not a high priority for them. As such, they may not see that as sufficient "compensation" for them to agree to a provision on unrestricted dual citizenship. Equally, hardline Bosniak nationalist elements in both SBiH and SDA have lingering strong ties with many of the foreign fighters who were granted Bosnian citizenship for wartime military

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service. More problematic, Silajdzic's advisers have signaled an initial unwillingness to strike any type of deal with the Bosnian Serbs, who the Bosniaks argue should reverse their position on Article 17 as "a good faith gesture designed to build mutual trust." We have not previewed the specifics of a compromise on the citizenship law with either side, since our judgment is that doing so at this time might further complicate prospects for the proposed amendment to Article 10 and embroil us in what ought to be a matter for Bosnian parliamentarians to resolve. However, we will remain alert to possibilities that can advance our counterterrorism agenda. END COMMENT.

MCELHANEY